

GAHC040013162022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

WP (C) 411 (AP)2022

***Ms. Zothanpari Khawlhiring,
D/o Lt. K. Saptawna,
House No. C-42, Leitan Hermon Veng, Durtlang, Aizwal,
P.O/P.S.-Aizwal, Mizoram.***

.... Petitioner.

- Versus -

***1:THE STATE OF AP and 4 Ors. Through the Secretary,
Department of Personnel,
Govt. of Arunachal Pradesh, Itanagar.***

***2:The Secretary Department of Personnel
Govt. of Arunachal Pradesh Itanagar.***

***3:The Secretary Department of Food and Civil Supplies
Govt. of Arunachal Pradesh Itanagar.***

***4:The Director Department of Food and Civil Supplies
Govt. of Arunachal Pradesh Naharlagun.***

***5:The Director Department of Audit and Pension
Govt. of Arunachal Pradesh Itanagar.***

.... Respondents.

Advocates for the petitioner: Mr. D. Panging.

Advocates for the respondents: Mr. S. Tapin, Sr. Govt. Advocate.

Date of Hearing : 19.01.2024

Date of judgment & order : 19.01.2024

B E F O R E
HON'BLE MR. JUSTICE KARDAK ETE

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Panging, learned counsel for the petitioner and Mr. S. Tapin, learned Sr. Govt. Advocate representing the State respondents.

2. By filing this writ petition, the writ petitioner has prayed for a direction to the respondent authorities to pay the family pension to her being the divorced daughter of Late K. Saptawna in terms of Central Civil Service (Pension) Rules, 2021.

3. The case of the petitioner, in brief, is that her late father K. Saptawna was initially appointed as an Agriculture Inspector on 08.01.1948 under the erstwhile North East Frontier Tract (for short, 'NEFT') and continued in the same post till 25.07.1952. After the Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District, Mishmi Hills District and the Naga Tribal Areas were clubbed together to form the North East Frontier Agency (hereinafter, referred to as 'NEFA'), the petitioner's father continue to serve under the NEFA Administration and served as a District Agriculture Officer from 25.07.1952 to 23.10.1957 and was appointed as an Extra Assistant Commissioner (for short, 'EAC') under the Department of Personnel and finally retired from service as EAC on 01.10.1974 while being posted as Deputy Director in the Food and Civil Supply Department at its Rowriah office at Jorhat, Assam, by which time, NEFA had become the Union Territory of Arunachal Pradesh. It is contended that the

petitioner was born on 01.09.1967 when her late father K. Saptawna was posted as EAC at Pasighat, East Siang District, Arunachal Pradesh.

4. It is contended that after superannuation of the petitioner's father, the petitioner and her family went back to their home state of Mizoram and settled down in Khatla locality of Aizawl City and the petitioner continued her educational pursuits in Mizoram and graduated with English honors from the North East Hill University (for short, 'NEHU') in the year, 1992. It is submitted that the petitioner got married at the early age, however, due to various differences she got divorced on 17.06.1995 by way of customary law being practised in the Mizo tribe, to which both the petitioner and her husband belonged to. After getting divorced/ separation from her husband, the petitioner has been staying with her parents at Khatla locality of Aizawl City. It is further submitted that despite her best effort, she could not be engaged in any job and was always dependant on her parents for her sustenance. After the superannuation of petitioner's father as an EAC under the Department of Personnel, Govt. of Arunachal Pradesh, the petitioner's father was getting his pensionary benefits till his demise on 29.09.2010. Thereafter, the petitioner's mother Smti. Lianchhingi was getting the pension till her demise on 08.07.2019 and till the demise of the petitioner's mother, the petitioner was staying with her at their Khatla residence. At the relevant time, the petitioner's mother was being paid a family pension amounting to Rs.8875/- (Rupees Eight Thousand and Eight Hundred Seventy Five).

5. It is contended that consequent to the demise of the petitioner's mother on 08.07.2019, the petitioner submitted a representation on 05.08.2019 to the Chief Controller of Accounts and Treasuries,

Government of Mizoram through which the family pension was being paid to the petitioner's late mother, wherein, a request was made to grant family pension to the petitioner in terms of the Central Civil Services (Pension) Rules, 1972 with all the supporting documents. The aforesaid representation, dated 05.08.2019 by the concern authority, however, by a letter dated 01.11.2019, the claim for family pension made by the petitioner was rejected on the ground that the same cannot be entertained as the petitioner's name was not found available in the family member of the deceased pensioner. The petitioner was also informed that the claim may be furnished to the concern Department/Head of Office where the deceased Government employee served last for further verification.

6. Mr. D. Panging, learned counsel for the petitioner submits that in terms of Rule 50 (9) (j) of the Central Civil Services (Pension) Rules, 2021 a divorced daughter is entitled to family pension for life or until she gets married or remarried or until she starts earning her livelihood, whichever is earlier. Mr. Panging, learned counsel for the petitioner contends that consequent to the communication, dated 01.11.2019 made by the Director of Audit and Pension, Government of Arunachal Pradesh, the petitioner has procured all the relevant documents for substantiating the claim of the petitioner that she is the divorced daughter of Late K. Saptawna including 'Family Details Certificate', dated 09.01.2020 and 'No income Certificate' which was issued by the Additional District Magistrate, Aizawl District, Mizoram, dated 08.01.2020. Thus, Mr. Panging submits that there is no impediments in granting family pension to the petitioner, being the divorced daughter of Late K. Saptawna in terms of Rule 50 (9) (a) of the

Central Civil Services (Pension) Rules, 2021.

7. Mr. Panging, learned counsel for the petitioner further submits that consequent to the above communication, dated 01.11.2019, the petitioner has produced all the necessary documents to substantiate the claim of the petitioner that the petitioner is the divorced daughter of Late K. Saptawna and therefore, the action of the respondent authorities in denying to pay the family pension to the petitioner being the divorced daughter of Late K. Saptawna, who retired as an EAC under the Department of Personnel, Government of Arunachal Pradesh is wholly illegal and unsustainable in the eyes of law and as such, prays that this Hon'ble Court may be pleased to direct respondent authorities to pay the family pension to the petitioner being the divorced daughter of Late K. Saptawna. He further submits that Central Civil Services (Pension) Rules, 2021, nowhere provide that in the event that the name of a children of a Government servant is not recorded in the pension papers of the government servant, family pension is not liable to be paid in terms of what is provided in Rule 9 (d) & (h) of the Central Civil Services (Pension) Rules, 2021 which provides the manner in which family pension is liable to be paid in respect of a deceased government servant or pensioner who leaves behind more children than one and in fact Rule 47 (b) provides for the manner in which gratuity is to be paid in case there is no nomination made by the government servant. Therefore, he submits that the ground that the petitioner's name is not reflected in the pension papers of Late K. Saptawna and as such, the petitioner cannot be paid family pension is totally misconceived and liable to be interfered with.

8. On the other hand, Mr. S. Tapin, learned Senior Government Advocate

representing the State respondents at the first blush submits that as per the Rule, the name of the petitioner is to be enlisted with the family members. The name of the petitioner as a divorced daughter was not found in the family Declaration Form/ Service Book of the deceased Govt. servant, therefore, the claim of the petitioner could not be entertained. The Director of Audit and Pension, Government of Arunachal Pradesh, Naharlagun by a letter, dated 01.11.2019 has in no uncertain term stated that the name of the petitioner was not included in the family members at the time of submission of pension papers of Late K. Saptawna, Ex-EAC, therefore, the claim of the petitioner could not be entertained.

9. Mr. S. Tapin, learned Senior Govt. Advocate having submitted above, however, referring to the affidavit filed on behalf of respondent No. 5 fairly submits that as per Rule 5 (9) (j) of CCS (Pension) Rules, 2021, a divorced daughter is entitled to family pension for life or until she gets married or starts earning livelihood whichever is earlier. In the present case, the name of the divorced daughter, the petitioner herein was not found in the Family Declaration Form/ Service Book of the deceased Government Servant, the claim of for family pension had to be returned for re-submission after necessary rectification. Now, since family details certificate issued by the Executive Magistrate, Aizwal (Mizoram), dated 09.01.2022 has been obtained, the claim for family pension can be re-processed by the concerned Head Office and the same can be re-submitted to the Directorate of Audit and Pension, Arunachal Pradesh, Naharlagun for sanctioning of family pension to the petitioner.

10. I have considered the submissions of the learned counsel for the parties and also perused the materials available on record.

11. The grievance of the petitioner is for a direction to the respondent authorities to pay the family pension to her being the divorced daughter of Late K. Saptawna in terms of Central Civil Services (Pension) Rules, 2021.

12. It is apposite to refer to the relevant provision of Central Civil Services (Pension) Rules, 2021.

13. Rule 50 (9) (j) of the CCS Rules, 2021 is extracted hereinbelow for ready reference:-

“50. Family Pension:-

(9)(j) Where a deceased Government servant or pensioner is not survived by a son or daughter eligible for family pension under clause (d) or clause (h) or if a son or daughter eligible for family pension under clause (d) or clause (h) dies or ceases to fulfil the eligibility conditions for family pension prescribed in those clauses, the family pension shall be granted or continued to be payable to an unmarried or widowed or divorced daughter beyond the age of twenty-five years for life or until she gets married or re-married or until she starts earning her livelihood, whichever is the earliest subject to the following conditions, namely:-

(i) the family pension shall be initially payable to the children in the order set out in clause (d) until the last child attains the age of twenty-five years;

(ii) there is no disabled child eligible to receive family pension in accordance with clause (e);

(iii) the unmarried or widowed or divorced daughter was dependant on her parent or parents when he or she or they were alive;

(iv) where a deceased Government servant or pensioner leaves behind more than one unmarried or widowed or divorced daughter beyond the age of twenty-five years, family pension shall first be payable to such daughter, who fulfil the eligibility conditions for grant of family pension under this sub-rule, in the order of their birth;

(v) The elder daughter shall be entitled to the family pension till she has got married or remarried or has started earning her livelihood, whichever is earlier and the younger of the daughters will be eligible for family pension after the elder next above her has got married or remarried or has started earning his or her livelihood or has died;

(vi) in the case of widowed daughter, death of her husband and in the case of divorced daughter, her divorce took place during the lifetime of the Government servant or pensioner or his or her spouse:

Provided that the family pension shall be payable to a divorced daughter from the date of divorce if the divorce proceedings were filed in a competent court during the life time of the Government servant or pensioner or his or her spouse but the divorce took place after their death:

Provided further that if, consequent on the death of the Government servant or pensioner and his or her spouse, the family pension to any other eligible member of the family has become payable before the date of divorce of daughter, the family pension to such divorced daughter shall not commence before the aforesaid member of the family ceases to be eligible for family pension or dies; (k) Where a deceased Government servant or pensioner leaves behind children f.

14. On a careful reading of the aforesaid Rule, more particularly, Rule 50 (9) (j), I find that the Rule clearly provides that if the deceased Government servant or the pensioner is not survived by a widow or widower or the widow or widower dies or ceases to be eligible for family pension, family pension at the rate specified in sub-rule (2) shall be payable to the child or children who fulfils the laid down conditions which provides that where a deceased Government servant or pensioner is not survived by a son or daughter eligible for family pension under clause (d) or clause (h) or if a son or daughter eligible for family pension under Clause (d) and (h) dies or ceases to fulfil the eligibility conditions for family pension prescribed in those clauses, the family pension shall be granted or continued to be payable to an unmarried or widowed or divorced daughter until she starts earning her livelihood, whichever is at the earliest, of course, subject to laid down conditions.

15. It is not disputed that Late father of the petitioner had retired from service on 01.10.1974 as an EAC and he was getting his pensionary benefits till his demise on 29.09.2010. The mother of the petitioner, thereafter, was getting pension till her demise on 18.07.2019. It is also not in dispute that the petitioner was born on 01.09.1967 and is the divorced daughter of Late K. Saptawna.

16. As noted above, Rule 50 (9) (a) (j) provides that the family pension shall be granted or continued to be payable to an unmarried divorced daughter beyond the age of 25 years for life or until she get married or re-married or until starts earning her livelihood, whichever is the earliest, of course, subject to laid down conditions. Thus, I am of the firm view that the petitioner is entitled to get the family pension.

17. The respondent authorities has also fairly stated at Para-6 of the affidavit-in-opposition filed on behalf of respondent No. 5 that as per Rule 50 (9) (j) of CCS (Pension) Rules, 2021, a divorced daughter is entitled to family pension for life or until she gets married or starts earning livelihood whichever is earlier. In the instant case, since the name of divorced daughter was not found in the Family Declaration Form/Service Boiok of the deceased Government Servant, the claim for family pension had to be returned for re-submission after necessary rectification. By now, since the Family Details Certificate issued by the Executive Magistrate, Aizwal has been obtained, the claim for family pension can be re-processed by concerned Head Office and the same is re-submitted to the Director of Audit and Pension, Govt. of Arunachal Pradesh, Naharlagun for sanctioning of family pension.

18. In view of such stand of the respondents coupled with the provisions of CCS (Pension) Rules, 2021, there is no reason as to why the petitioner should not be paid the family pension.

19. In view of what has been discussed hereinabove, I am of the firm view that the petitioner is entitled to get the family pension being divorced daughter of Late K. Saptawna in terms of Central Civil Services (Pension) Rules, 2021.

20. Having concluded that the petitioner is entitled under the Central Civil Services (Pension) Rules, 2021 for family pension and having considered that the respondents has made categorical statement that since the Family details certificate issued by the Executive Magistrate, Aizwal, dated 09.01.2022 has been obtained, the claim for family pension can be

processed by concerned Head of Office and the same is re-submitted to the Directorate of Audit and Pension, Govt. of Arunachal Pradesh for sanctioning of family pension, this writ petition is allowed with a direction to the respondent authorities to complete the process of sanctioning of family pension of the petitioner within a period of 2 (two) months from the date of receipt of the copy of this order and thereafter, to pay the family pension to the petitioner.

21. With the above observations and directions, this writ petition stands allowed and disposed of. No order as to cost(s).

JUDGE

Comparing Assistant